DEPARTMENT OF STATE REVENUE

Revenue Ruling 98-07 IT

December 29, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Gross Income Tax – Conversion From C Corporation to S Corporation – Cash Method of Accounting

Authority: IC 6-2.1-2-2, IC 6-2.1-5-12, IC 6-2.1-3-24, IC 6-3-2-2.8

The taxpayer requests the Department to rule on the application of gross income tax to receipts received subsequent to a conversion from a C corporation to an S corporation for work performed on long-term construction contracts prior to the conversion.

STATEMENT OF FACTS

The taxpayer is a construction contractor domiciled in Illinois with Indiana income from long-term construction contracts. The taxpayer's method of accounting is the accrual method. However, the taxpayer uses the percentage of completion method of accounting for long-term contracts as required by Internal Revenue Code Section 460. Recently, the taxpayer elected to convert from a C corporation to an S corporation for tax purposes.

DISCUSSION

IC 6-2.1-2-2 imposes gross income tax on gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana. IC 6-2.1-5-12 provides that if a taxpayer does not use either the cash or accrual method of accounting for federal purposes, the taxpayer shall use the cash method in determining its gross income tax liability. Pursuant to IC 6-2.1-3-24 and IC 6-3-2-2.8, an S corporation is not subject to gross income tax.

In the instant case then, the taxpayer while a C corporation was subject to gross income tax, and was required to use the cash method of accounting for gross income tax purposes as the taxpayer did not use either the cash or accrual method of accounting for federal income tax purposes. Under the cash method of accounting, income is earned and subject to taxation only when received by a taxpayer. When the taxpayer converted from a C corporation to an S corporation the taxpayer was no longer subject to gross income tax. It follows that receipts received by the taxpayer subsequent to the conversion for work performed on long-term construction contracts prior to the conversion would be earned by the taxpayer as an S corporation, hence, not subject to gross income tax.

RULING

The Department rules that receipts received by the taxpayer subsequent to the taxpayer's conversion from a C corporation to an S corporation for work performed on long-term construction contracts prior to the conversion are not subject to gross income tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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